Supreme Court, U.S.
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No. 04-1519

IN THE

Supreme Court of the United States

_____ Term, 2005

PHILLIP A. JONES SR.,

Petitioner,

v.

FULTON COUNTY GOVERNMENT,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING

PHILLIP A. JONES SR.
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QUESTIONS PRESENTED

1. Should Fulton County Government, Georgia be allowed to ignore Title VII of the Civil Rights Act of 1964?

LIST OF PARTIES
AND CORPORATE DISCLOSURE STATEMENT

All of the parties to the proceedings are named in the caption except the below.

1. Fulton County Department of Environment And Community Development.

2. Fulton County Office of County Manager

3. Fulton County Personnel Department

TABLE OF CITED AUTHORITIES

Cases

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ARBITRATION OPINION AND AWARD (05-05-05)..... 1a

Petitioner, Phillip A. Jones Sr., respectfully prays that a petition for rehearing for grounds of intervening circumstances of substantial and controlling effect was not previously presented to the Court showing federal arbitration is now final and the merits will alter the decision, "In the Matter in Arbitration Between Phillip A. Jones Sr. Grievant and Fulton County Government, Department of Environment And Community Development, Employer, Opinion and award, Written Warning Letter." Fulton County Government did not have cause to give Jones a warning letter, suspend Jones without cause nor, Fulton County did not have cause for a Fitness for Duty evaluation without written reasons of particularity. The Court is respectfully requested to hear the new evidence relating to constitutional violations within due process within Title VII violations this court has supervisory protocol.

OPINIONS BELOW

The Arbitration Opinion and award, Written Warning Letter (05-05-05) is reprinted.

STATEMENT OF JURISDICTION

A petition for a writ of certiorari was denied on 10/3/05. The judgment of the Eleventh Circuit was initially entered on December 14, 2004. A timely petition for rehearing was denied on February 4, 2005. This Court has jurisdiction under 28 U.S.C § 2101(e) and 28 U.SC. § 1254 (1), (2).

STATUTORY PROVISIONS INVOLVED

This petition involves the following Constitutional and Statutory provisions:

1) Title VII of the Civil Rights Act of 1964;

GROUND FOR REHEARING

THE ARBITRATION OPINION

The Arbitration Opinion page 8, paragraph 1, line 20, submitted into evidence as follows "The County has failed to sustain its burden of proof on this charge." The arbitration opinion page 8 paragraph 2, Ln. 1, "Jones has also complained about violation of his procedural rights in regard to the grievance process. The Review Committee appears to agree that Cover failed to properly address the grievance process." The arbitration opinion page 11 paragraph 1, Ln. 14, states "Suspicions arise because Cover charged Grievance with an unauthorized absence when he was granted leave; charged him with insubordination which was clearly erroneous and the fact that DuPree did not initiate or recommend discipline but Cover did." The Arbitration Opinion page 11 paragraph 2, Ln. 1. "Based upon the foregoing discussion of the issues and findings of fact, the grievances must be sustained on the merits because the County has failed to prove the charges made and it is clear there was no basis for the charges. On July 21, 2003, Phillip A. Jones Sr., now (Jones), filed a timely discrimination civil action within the United States District Court Northern District of Georgia

Atlanta Division. Following Jones documents of dispute resolution showing that, a second level of administrative enforcement is authorized and mandated by the State of Georgia. The State of Georgia do not have a civil service commission board to hear reviews and to investigate violations of civil service employees. The State of Georgia ratification of the Georgia General Assembly Legislature (OCGA - 45 -20 - 01 et. seq.) given review of a local merit system to Courts is in violations of the Civil Service Act.

A. *Grievant Award*

The Arbitration Award Page 12 line 1 states "His only power relates to the written warning and the grievance related thereto. He finds that the written warning was improperly issued and was not appropriate. The Appointing Authority, Cover, did not have cause to discipline Jones in regard to the events of May 11. The warning letter shall be removed from his personnel file and all references thereto shall be stricken from the record. Contrary to the argument of the County that it was a "mere written warning" it was the second step of the progressive discipline given to an employee with a clean discipline record and a threat to future more severe discipline." The ward is as follows: The grievance is sustained. The written warning is invalid and shall be removed from Mr. Jones' record. On October 19, 2005, Jones spoke to the Fulton County Board of Commissioners informing them that the arbitration award have not been complied with nor the remedies for the grievance.

Fulton County has failed to respond to Mr. Jones October 11, 2005 letter requesting for board action. The essence of Jones case shows that Fulton County Government since approval of its self governing authority has departed from establishing a fair dispute resolution program. The ratification of the State of Georgia Legislature (OCGA 45 - 20 - 1 et. seq.) open the door for local governments in Georgia to create a self governing protection at the expense of a fair administrative resolve for its civil service employees.

B. Title VII Violations

The County showing Watson v. Blue Inc., 324 F.3d 1252 (11th Cir. 2003); a company that has a sexual harassment policy may still be held liable if the policy is in effective. The evidence showed County has appropriate policy but the board of commissioners and County ignored their own personnel rules and regulations regarding Title VII filing of EEOC violations actions for protection under the United States Laws governing discrimination. Jones was not treated fairly within policy. The Arbitration opinion shows continuous policy violation within Fulton County Government Personnel Department administration. The evaluation process of Jones showed that race, gender, and national origin was not neutral in the personnel regulations. Jones new sustain grievance remedies to be supervised by the board of commissioners for fair treatment should be upheld.

C. County Protocol Violations

The United States District Court Northern District of Georgia in Civil Action: 1:03-CV-2036-JEC inappropriately administrated a protected civil service protocol in accepting the role of the Civil Service Commission; unlawfully, did violate the fourth step of the Civil Service Act. The particulars are, "Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners; hereinafter, provided for, and its own subordinates, and those in the public service, in respect to the execution of this act." The "Arbitration Award" went beyond the court action within an independent federal investigation allowed within the civil service act and it is now final and appropriately before this Court. The evidence shows the County continued to use retaliation and discrimination against Jones and falsely provided evidence before the District Judge Julie E. Carnes and Magistrate Judge Alan J. Baverman. The ruling of the Arbitration Award and Opinion is appropriately submitted to this Court for review and judgment as evidence.

II. CIRCUIT COURT CONFLICT WITH THE ARBITRATION DECISIONS

The Court is asked to review the evidences showing the County interfered with due process of the employees dispute resolution program. The County did not allow the grievance protocol. The

arbitration hearing sustained the plaintiff showing that the Director "Cover", County Manager, County Attorney and the Board of Commissioners ignored Jones's grievance protocol. The retaliation continued while the district and circuit court review were on going and with the Supreme Court of the United States on appeal. Arbitration Award Page 5, Line ,1 states, "His attempt to elevate the grievance to the Board of Commissioners level was unsuccessful because of the improper interference by Ms. Dancy, attorney for the defendants on the pending federal action." The Eleventh Circuit received Jones Initial Brief of Appellant "Phillip A. Jones Sr. on July 23, 2004. A timely submittal of the Brief for the Appellant Response Phillip A. Jones Sr. was filed on September 2, 2004. In conjunction, a grievance was filed within Fulton County Government on May 13, 2004; two grievances for retaliation and harassment by the Department of Environment And Community Development. The grievance review committee under Fulton County Policy 100-24 shows numerous conflicts within the dispute resolutions programs that showed internal conspiracy within Fulton County Government to deny Jones his rights as a civil service employee. Fulton County Commissioner Chairperson Karen Handel refused to respond responsibly within her role in the grievance process in a letter requesting due process dated August 6, 2004. Joseph Warfel of the Department of Environment And Community Development showed workplace violence towards Jones as an attempt to retaliate and harass Jones doing these proceeding. The Department of Environment &

Community Development harassed Jones through policy on September 15, 2004 with a mandatory Fitness for Duty Evaluation with out cause. On July 18, 2005, the Plaintiff Phillip A. Jones Sr. was sustained in the Fitness Review Evaluation. These procedures were all used in retaliation thus a violation of the federal discrimination act of 1964 within Title VII. County did not provide reason to evaluate and violated their own personnel rules and regulations. On October 13, 2005, the suspension was rescinded but Mr. Cover and the County Manager failed to removed all record pertaining to the warning letter and suspension . On November 1, 2005, Mr. Jones submitted 4 grievances requesting removal of the fitness for duty evaluation without written reasons or written violation from his immediate supervisor. The County Manager was sent on November 7, 2005, a request by Mr. Jones to be reimburse him for the financial damages and the removal of the errors by the County within his personnel files.

Fulton County Interfered With An Employee Grievance

The First Grievance submitted on May 13, 2004 states in step # 1 as follows "The Department of Environment & Community Development did not have (cause) as defined in PR 1800-1 Definition of cause to give a written Warning to Mr. Jones. The Department of Environment error in administration of Departmental Policy and County Wide Policy through PR-100-5-Title VII of Civil Rights Act (retaliation Act), Equal Employment Opportunity

PR-1700-1 and PR-17-2- Standard of Conduct and Ethics." The remedy: "The written warning should be taken out of Mr. Jones personnel files. And, Supervisor must be provided with law for fair treatment."

The second employee grievance Step #1 states " Mr. Phillip A. Jones Sr. was given a warning written that has been shown Mr. Jones did not violates departmental policies nor did he violate County Wide Policy. Mr. Jones was given a written warning based on habitual retaliatory practices shown by the Department of environment And Community Development as represented by Joe Warfel, Christina DuPree and Steve Cover. These acts violates PR-1800-2-Types of Offenses, progressive Discipline And Mandatory Disciplinary Guidelines." The remedy: The Department of Environment has been shown to be habitual in retaliatory practices; therefore, supervisor of Mr. Jones must be given to County Manager or Board of Commissioner."

REASONS FOR GRANTING THE REHEARING

I.

A REHEARING IS WARRANTED BY THIS COURT BECAUSE PETITIONER'S RIGHT TO DUE PROCESS AND FAIR JUDICIAL NOTICE WAS ERRONEOUSLY DENIED.

Petitioner requests, pursuant to Fed. R. Civil "Records" P. 902(1),(2),(3) and (8), that the trial court charge a violation for not taken judicial

notice on relevance material to the case; Fed. R. Civil P. (401) "Relevant Evidence" and material facts that produce direct and circumstantial evidence, was not justified within **Powell v. First National Bank and Trust Co.** 58 Ga. App. 648, 199 S.E. 668 (1938); 31 C.J. S. Evidence, § (3)(a); the judge has broad discretion in taking judicial notice. The reasoning below did not justify the refusal of evidence that this court failed to accept the facts provided by the Petitioner. Judicial notice will be taken of records and proceeding in the same case; **Woodruff v. Balkcom**, 205 Ga. 445, 53 S. E. 2d. 680 (1949); The magistrate judge review failed to rise to civil rights § 7 Government and Administrative Matters, "General matters of government and certain related be judicially notice, **Madden v. Fulton County,** 102 Ga. - App. 19, 115 S.E. 2nd 406 (1960), see 29 AM. Jur. 2d. Evidence, § 37-48; Circumstantial Evidence of this case that was not considered by the United States Magistrate Judge. It showed in the Arbitration Opinion that due process "4th Amendments" of the U.S. Constitution was denied Jones while County openly violated his rights.

A. THE COURT IS ASK TO RECONSIDER THE CONFLICTS WITHIN THE DISTRICT AND APPELLATE COURTS THREATENS NATIONAL UNIFORMITY IN OUR DISCRIMINATION LAWS

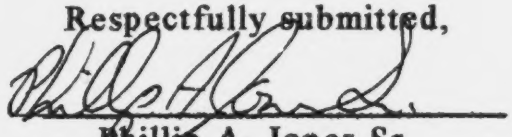
The Magistrate Judge's Report and Recommendations 28 U.S.C. § 636 (b)(1), Fed. R. Civ. P. 72(b) and that Court's Local Rules 72.1(D)(2) showed biases to Fulton County

Government Fed. L. R. C. P. 58.3 Retittus (B). Judgment Modified, Vacated or Reverse, showing error by the District Court within Fed. Rules of Civil Procedures, Rule 56 (e); **Celotex Corp. v. Catret,** 477 U.S. 317, 324; 106 S. Ct. 2548-53; 91 L. Ed. 2d 265, 272-3; The District Court failed to continue this case showing violations to due process within ID at 519. see also, **Donaldson v. Clark,** 78 6f. 2d 1570, 1575 (11th Circuit 1986); **Griffith v. Wainwright,** 77 2f., 2d 822, 825 (11th Circuit 1985). The District Judge failed to receive the Petitioner's objections. The Arbitration's opinion went beyond appropriately showing cause.

Conclusion, respectfully submitted for intervening circumstances on grounds not previously presented within final arbitration opinion and award for Jones showing Fulton County not allow due process in Title VII of the Civil Rights Act of 1964.

For the foregoing reasons, it is respectfully urged that the request for Petition of Rehearing be granted.

Respectfully submitted,



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In the Matter in Arbitration

Between

PHILLIP A. JONES, SR. GRIEVANT

and

FULTON COUNTY GOVERNMENT , DEPARTMENT OF ENVIRONMENT AND COMMUNITY DEVELOPMENT, Employer

Opinion and award

Written Warning Letter

May 5, 2005, Atlanta, Georgia, Decided

COUNSEL:
Phillip A. Jones Sr. Pro Se counsel for Grievant

Steven Rosenburg, Senior Attorney, Employer
Valerie Ross, Staff Attorney, Employer

ARBITRATOR: William D. Freemason

The hearing in this matter was held on March 22, 2005 at the Fulton County Building, 141 Pryor Street, S.W., Atlanta, Georgia before William D. Freemason, impartial arbitrator. The Grievant appeared pro se, and the Employer was represented by Valerie A. Ross, Esq. and Steven E. Rosenburg, Esq. of the Fulton county Attorney's Office. Exhibits were received in evidence and sworn testimony was heard from Christina Dupree, Joseph Warfel and Phillip A. Jones, Sr. on behalf of the Grievant and from Steven R. Cover on behalf of the Employer. The Employer made an oral closing argument at the hearing and the Grievant filed a written closing argument, received on March 28. The transcript was received by the arbitrator on April 25, at which time the hearing was closed.

Grievant, and administrative Coordinator in the Department of Environment & Community Development, received a warning letter dated May 12, 2004 stating reasons the warning:

> Your supervisor has informed me that on May 11, 2004, you signed in at 8:00a.m. but were away from your work station for approximately three hours without prior authorization. During this time you were not performing your assigned duties and responsibilities. You did not notify your supervisor that you departing the Government Center, nor did you sign out on the Field Sheet as required by the Department Policies and Procedures. I consider this to be an unexcused and unauthorized absence during working hours (PR 1800-2,Art.1c). I consider your failure to sign out on the Field Sheet as a failure to follow specific instructions (PR 1800-2 Art. 11b).

Grievant filed two grievances protesting the warning letter. The grievances were denied by his immediate supervisor, Ms. Dupree, and by the Department head, Mr. Cover. They were advanced to the Grievance Review Committee which denied his grievance by Order dated July 15, 2005. Grievant duly advanced the dispute to arbitration and the matter is now properly before the arbitrator.

EMPLOYER'S POSITION

There was a clear policy that there would be no campaigning during work hours and the evidence would show Jones campaigned during the hours of 8:00 a.m. and roughly 11:00 a.m. on May 11. This is a clear case of a written warning to an employee who was determined to campaign. He left without authority and did not come back until 10:45. He also failed to sign out on the Field Sheet.

Jones got a mere written warning for unauthorized absence. He did not get a reduction in pay or lose his position or get terminated or suffer other adverse actions. None of his rights were violated. He simply received a mere written warning because he did not come to work or get a prior approval from his supervisor before he went campaigning for a position on the Grievance Review Committee.

In addition to his grievance relating to the merits of the warning, he apparently is saying there was a conflict because of the fact he showed up for a hearing on his grievance before the Grievance Review Committee on June 24 and the Committee was not there. He claims it was re-scheduled in violation of the grievance policies and procedures. His position is clearly wrong, Any scheduled meeting of the Committee may be rescheduled"...for good

cause as determined by the chairperson." It was re-scheduled by notice dated June 23, which was received by Jones on that day. Jones is attempting to apply the cause definition in the personnel regulations to the provision in the policies and procedures manual. That cannot be done. They are different documents and different regulations which are not cross referenced in any way, shape or form. The Committee at its own discretion can reschedule any hearing at any time. If simply rescheduled the hearing like they do all the time if the need arises. He was given full hearing, the matters were heard and considered by the Board and his grievances was denied.

The grievance should be denied because the evidence was not sufficient to show any violation of Grievant's rights or of the Policies and Procedures Manual and the written warning was very appropriate because he decided to campaign during working hours and came back at 10:45 without written approval or any type of approval from his immediate supervisor.

GRIEVANT'S POSITION

Grievant was a candidate for election to a seat on the Grievance Review Committee, the election to be held on May 11, 12 and 13, 2004. About a month before the election, he discussed his situation with Ms. Dupree and she accepted his plan that he would campaign before and after work and on his lunch hour. He stated there might be times he would unexpectedly delayed returning to his office and he would inform her at the earliest opportunity. On May 11, he was pursuing that plan. He arrived at the building about 6:30 and between then and 7:00 he filled out the Time Activity Sheet indicating he would begin work at 8:00a.m. He left the building to campaign elsewhere. He campaigned at the

juvenile court building shortly before 8:00 and left to catch the shuttle back to the government center. He then learned that the shuttle was no longer running to and from the juvenile court building because of repair work on the streets. he was unable to call his supervisor at that time. He returned to the center and amended the Activity Sheet from 8:00 a.m. to 10:45 a.m. Ms. Dupree was in a meeting but he saw her as soon as possible and explained what had occurred. She accepted his explanation and told him to submit a request for leave for the time involved. He submitted it and she signed it. She made no mention of any discipline in regard to the events. He received the warning letter the next day and filed the grievance the following day. He was not given an opportunity to meet on the grievance or obtain counseling at any step in the procedure until the improperly rescheduled meeting before the Grievance Review Committee.

The warning letter was issued without basis and as a result of the ongoing policy and practice of Mr. Cover and Mr. Warfel in harassing and discriminating against Grievant, joined by Dupree. All three were named in a pending action in the United States District Court charging discrimination, harassment and retaliation in violation of Title VII. The warning letter was additional discrimination, harassment and given in retaliation for the federal action. Though the defendants therein had obtained a favorable summary judgment in that action in April 2004, it was on appeal to the court of Appeals at the time of hit incident.

The warning letter cannot be allowed to remain because the County has failed to follow its own procedures throughout the process. It did not counsel with him at the outset. He was not given a hearing by either Dupree or Cover with regard to the grievances. He was entitled to have his

grievance granted when there was a "no show" for the June 24 hearing. The chairperson gave no reason for the rescheduling, there was no mutual agreement to reschedule and there was no evidence of any cause or good cause for rescheduling it. His challenge to two members of the Committee on the grounds of bias was ignored. The two newly elected members whose election he had challenge should not have been permitted to sit on his grievances. His attempt to elevate the grievance to the Board of Commissioners level was unsuccessful because of the improper interference by Ms. Dancy, attorney for the defendants on the pending federal action.

The harassment and retaliation are continuing and ongoing. The warning letter was used as a basis to suspend the Grievant and to charge him with unfitness for duty and to require a fitness for duty evaluation without cause and without following the applicable procedures. The County has continually delayed and postponed the fitness evaluation and refused to stay the same pending the outcome of this grievance procedure.

Based upon all the foregoing, Grievant requests the arbitrator determine there was no basis or merit to the warning letter; was inappropriately and improperly issued; that it be removed from his personnel file and the records pertaining to him; that he be supervised as a high profile employee, that the violations by the County be identified and that he be a participant in a reconstruction of the employees dispute resolution program as part of recommended new duties and responsibilities.

OPINION

According to Jones, he arrived at the Government Center about 6:30a.m. on May 11 intending to do some campaigning before starting work at 8:00, his regular starting time. At about 7:00 a.m., he entered a start time of 8:00a.m. on the Activity Sheet and left the building to go to other buildings to campaign. He did not make any entry on the Field Sheet because he had not started work yet and expected to be back at 8:00 with no need to sign out on the Field Sheet. His expectations suffered a blow when he went to get the shuttle to return to the Center and learned it was no longer running because of the Street repair work. When he learned it was no longer running, he had no cell phone to call Dupree and was concerned that going into the juvenile court building might lead to charges of improperly campaigning too close to a polling place. He made his way back to the Center and amended his entry on the time sheet to show a start time of 10:45 and sought to see Dupree to inform her of the turn of events, but she was in a meeting to his meeting with her was delayed. Sometime between 9:00a.m. when Dupree arrived at work and 10:45, she had looked for him to assign a task and learned he was not around. When he returned and explained what happened, she told him to prepare a leave request for the 8:00 to 10:45 period, which he did and she signed it. She appeared to accept his explanation and the County has not contested that explanation or offered any evidence relating thereto. Nothing was said about any discipline or that he had done anything wrong.

It is well established in arbitration and in the law generally, that the employer has the burden of proof in discipline cases. Disciplining an employee is a corrective action or punishment or both. It is not unlike a criminal

action. It is based upon alleged offenses or allegations of misconduct on the part of the employee. Disciplinary action in the absence of proof of guilt is arbitrary and cannot be considered appropriate. PR 1800-1 states an employee may be disciplined for cause and cause is defined. In this case, the County has the burden of proving the charges of unauthorized absence and insubordination by a preponderance of the evidence.

Cover issued the warning letter on May 12 alleging two offenses by Grievant on May 11: unauthorized absence (PR 1800-2,Art.1c) and failure to sign out on the Field Sheet (PR1800-2, Art11b). Turning first to the absence charge, according to Dupree, Cover issued the warning letter and she did not recommend that he issue the letter. She did testify that she thought it was justified. There is no evidence that she informed Cover of Grievant's explanation or her acceptance of it or that she signed the leave request granting leave for the period from 8:00 to 10:45. There was some confusion about the entry on the Activity Sheet and frequent statements that Jones signed in at 8:00 when the facts clearly show that the entry was made before 8:00 and that employees frequently sign in early and go for coffee or breakfast or such and then report to their work stations at the time they entered on the sheet. Grievant committed no violation when he did that in this case. Grievant did not return at the expected time, nor did he contact Dupree until nearly three hours later. Cover and Dupree admitted that an employee whose absence from the work station was the result of an unforeseen event could ask for and receive permission after the fact within a reasonable time. The evidence is that Grievant met with an unforeseen event, the shuttle bus ceased its normal operation because of the street repairs. Because of the polling place rules, he could not use a phone in the juvenile court building.

The County offered no evidence that it was not an unforeseen event or that he did not advise Dupree within a reasonable time. When he offered her explanation, she accepted it and told him to submit a leave request. When he did so, she granted vacation leave for 2 hours and forty minutes, from 8:00a.m. to 10:45a.m. Hence, he was on an authorized absence. Though Dupree said she was merely making him give her back the hours, in fact those hours were not taken from her because he amended the sheet to remove them and she doubled the assessment by charging him with 2.75 hours vacation leave. To add a warning letter is to sanction him thrice for alleged unauthorized absence when in fact it was authorized when Dupree granted the leave request. The County has failed to sustain its burden of proof on this charge.

Tuning to the second ground, failure to sign out on the Field Sheet, it is first noted that the Department Policies states an employee who expects to be away from his or her work area for more that fifteen minutes, shall make an entry on the Field Sheet and that included periods of leave taken during the day. When Grievant left the Center, he did not expect to be away from his work area at all during the day. When Grievant left the Center, he did not expect to be away from his work area at all during his work time, let alone over fifteen minutes. He left about an hour before his work day was to begin. The policy appears to be applicable only when an employee is at work and leaves for more that fifteen minutes or knows in advance that he will be working elsewhere the following day. Hence, there is no proof that he violated the policy. Equally important, if not more important, is that the charge cites and invokes PR 1800-2, Art. 11b. Article 11 is entitled "Insubordination." The second , or B., section is entitled: "Failure to carry out orders, failure or

excessive delay in carrying out work assignments or specific instructions of superiors." The failure to sign out the Field Sheet is not an act of insubordination. There were no specific instructions of a superior. The County has failed to sustain its burden of proof as to this charge.

Jones has also complained about violation of his procedural rights in regard to the grievance process. The Review Committee appears to agree that the County Manager counsel the Department Head regarding the grievance process. The record supports Grievant's claim that he was entitled to an opportunity to meet with Dupree and with Cover on his grievance. It also supports a finding that there was a failure by Cover to properly investigate the issues. Such constitutes a denial of his rights under the promised procedures. Grievant's claim that he was entitled to a ruling in his favor under the "no show" provision is rejected. That applies only to the failure of a party to appear at the hearing, not to the Committee, and the Department was not required to appear on June 24 because the hearing had been rescheduled. His claim of a violation of his rights in regard to the rescheduling of the hearing before the Committee from June 24 to July 15 has merit. According to the Deputy County Manager, the chairperson of the Committee rescheduled to the hearing for "good cause." The chairperson did not testify and there is not exhibit explaining the reason for the rescheduling. It appears Cover scheduled some vacation for June 24. There is no evidence that he scheduled the vacation before he learned of the scheduling of the hearing or that he could not arrange his vacation to comport with the hearing date. The County argues that Grievant's reference to the definition of "good cause" on PR400-6 and PR1800-1 is "clearly wrong"" that the definitions are in two different documents and two different

regulations that are not cross referenced. It is well established in the law that words are to be given their ordinary meaning or definition absent a stated special or specific meaning. Hence, cause or good cause have the same meaning regardless of the document in which they appear. In fact, the definitions appearing in different sections of the personnel regulations are essentially the same though dealing with different subjects. Good cause requires that action be justifiable, non arbitrary and is based upon good and sufficient reasons. None was shown by the County in this case. That violation is not, however, a basis on which the arbitrator may grant the grievance.

The Grievant also contends it was improper to permit Ms. Nelson and Ms. Carter to sit on and hear his grievances because of alleged bias against him. According to him, they were fully aware that he had filed objections challenging their election to their seats on the Committee because of their conduct in the election proceedings. His evidence does not reveal when he filed the objections or when they were heard by the election officials or their disposition of the challenges. Nor does his evidence reveal that he specifically asked each to recuse herself. It only shows that he objected and the chairperson said they would move on with the grievances with apparently no determination of the issue presented. he has failed to prove they were biased or that their bias infected the decision of the Committee.

The Grievant has repeatedly alleged that warning letter and other actions were taken by Dupree, Cover and Warfel in retaliation for various reasons and actions and that they discriminated against him on racial and sex bases and engaged in harassment. the arbitrator declined to hear evidence relating to those matters that were factors in the action her brought in the federal court under Title VII on that

ground that summary judgment had been entered against him and the arbitrator is precluded by the judgment from further investigation concerning those alleged acts. He has also sought to introduce his belief that a subsequent suspension and fitness for duty evaluation requirement were based on the warning letter and were actions taken in retaliation and were discriminatory and part of a harassment conspiracy. The arbitrator declined to consider evidence on those issues as it involved acts occurring after the warning letter giving rise to the grievances and that the arbitrator does not have jurisdiction beyond the issue of the propriety of the written warning. There was no evidence offered of any facts proving retaliation or discrimination or harassment leading up to the warning letter. There was no evidence offered of disparate treatment.

It is to be noted that Grievant proceeded pro se in this case. He clearly did not understand what was relevant and what was not or the difference between facts and allegations or naked assertions or the need to provide the arbitrator with facts, evidence and arguments based thereon. There is reason to believe that a qualified or competent representative might have produced evidence and argument tending to support the charges made. In a pro se proceeding, the arbitrator must avoid becoming an advocate or participant while seeking to conduct an orderly hearing and obtaining the evidence necessary to enable him to reach a reasoned decision. He must remain impartial. There are facts in this case suggesting management might benefit from a review of the events beyond the evidence in the record. For instance, the County commenced its opening statement and ended its closing statement with a statement of the policy against campaigning during work hours, that Grievant's priority was to campaign and that he campaigned between 8:00 and 10:45 a.m. on May

11. There was no valid reason to introduce that subject. He was not charged with that offense. It is not mentioned in the warning letter. The rule relating to campaigning was mis-stated. The Department discourages it but still allows it with permission of the supervisor. Grievant discussed this with Dupree and she granted permission. Further, there was no evidence that Grievant was campaigning between 8:00 an 10:45 a.m. on May 11. Suspicions arise because Cover charged Grievant with an unauthorized absence when he was granted leave; charged him with insubordination which was clearly erroneous and the fact that Dupree did not initiate or recommend discipline but Cover did.

Based upon the foregoing discussion of the issues and findings of fact, the grievances must be sustained on the merits because the County has failed to prove the charges made and it is clear there was no basis for the charges. Grievant has requested a number of remedies relating to his supervision, duties, county processes, etc. which clearly demonstrate he does not understand the powers of the arbitrator are very limited. He does not have a roving commission to police the County processes, policies and procedures. His only power relates to the written warning and the grievance related thereto. He finds that the written warning was improperly issued and was not appropriate. The Appointing Authority, Cover, did not have cause to discipline Jones in regard to the events of May 11. The warning letter shall be removed from his personnel file and all references thereto shall be stricken from the record. contrary to the argument of the County that it was a "mere written warning", it was the second step of the progressive discipline given to an employee with a clean discipline record and a threat to future more severe discipline.

AWARD

The grievance is sustained. The written warning is invalid and shall be removed from Mr. Jones' record.

William D. Fergusion
Arbitrator

IN THE
SUPREME COURT OF THE UNITED STATES

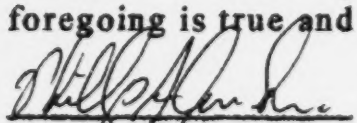
PHILLIP A. JONES SR.
Petitioner
v.
FULTON COUNTY GOVERNMENT
Respondent (s)

PROOF OF SERVICE

I, Phillip A. Jones Sr., do swear or declare that on this date, November 10, 2005, as required by Supreme Court Rule 29, I served the enclosed Resubmit **Petition for Rehearing** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or delivery to a third-party commercial carrier for delivery within 3 calendar days.

Fulton County Attorney
Rolesia Butler Dancy, Senior Attorney
141 Pryor Street S.W., Suite 4001
Atlanta, Georgia 30303

I declare under penalty of perjury that the foregoing is true and correct.



Phillip A. Jones Sr.
Pro Se Counsel

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CERTIFICATION OF PRO SE COUNSEL

I, Phillip A. Jones Sr., on this10th day of November 2005, has presented in good faith and not for delay; this Petition for Rehearing for grounds intervening circumstances of substantial or contolling effect or to other substantial grounds not previously presented within the May 5, 2005, final Arbitration Award and Opinion sustained Phillip A. Jones Sr.; that, shows Fulton County Government did discriminate within policy should be charged a violation of Title VII of the 1964 Civil Rights Act.

Phillip A. Jones Sr.
Pro Se Counsel
Certification

Phillip A. Jones Sr.
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Atlanta, Georgia 30311

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